

w/o

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

FILED
DATE: <u>6-10-11</u>
<u>5:04</u> o'clock <u>P</u> .M.
Sandra K Markham, Clerk
BY: <u>RHONDI HAGEN</u>
Deputy

DIVISION PRO TEM B

SANDRA K MARKHAM, CLERK

HON. WARREN R. DARROW

BY: R. Hagen, Deputy Clerk

CASE NO. V1300CR201080049

DATE: June 10, 2011

TITLE:
STATE OF ARIZONA,

COUNSEL:
Yavapai County Attorney
By Sheila Polk
Bill Hughes
(Via OnBase)
(For Plaintiff)

(Plaintiff)

v.

JAMES ARTHUR RAY,

(Defendant)

Thomas K. Kelly
(Via Electronic Mail)
(For Defendant)
and
Luis Li/Brad Brian/Truc Do/Miriam Seifter
MUNGER TOLLES & OLSON LLP
(Via Electronic Mail)
(For Defendant *Pro Hac Vice*)

HEARING ON:	NATURE OF PROCEEDINGS	COURT REPORTER
ORAL ARGUMENT REGARDING LEGAL ISSUES		Mina Hunt
START TIME: <u>9:39 a.m.</u>		

APPEARANCES:

Sheila Polk, Counsel for State
Bill Hughes, Co-Counsel for State
Detective Ross Diskin, Case Agent
James Arthur Ray, Defendant
Tom Kelly, Counsel for Defendant
Luis Li, *Pro Hac Vice* Counsel for Defendant
Miriam Seifter, *Pro Hac Vice* Counsel for Defendant

The Jury is not present. The Court and Counsel address legal issues as set forth below.

Counsel for Defendant addresses the Court regarding a *Brady* violation and moves the Court for a limiting instruction. Argument ensues. Based on the argument presented, the Court **finds** that there has not been a *Brady* violation. Further argument ensues.

The Court **denies** Defense Counsel's *Brady* motion with regard to the issues raised today. Defense Counsel presents further argument.

Closing arguments are discussed.

The Court advises the guideline Counsel shall follow is *State v Bible* regarding proposed closing arguments.

IT IS ORDERED that there can be no use of the Haddow report for inculpatory inference or argument. With regard to argument regarding intentionally induced heat stroke, Counsel are advised to look at *Bible*. There is an obligation to make arguments only substantiated from the evidence.

The Court states the transcript provided regarding Dr. Dickson's testimony and medical advice turned out to be accurate.

~~~Recess~~~

At 11:30 a.m. the hearing reconvenes with all previously appearing parties present.

Counsel for Defense raises a scheduling issue and whether or not State will be calling rebuttal witnesses. Discussion ensues. Counsel for State advises they are in process of determining whether or not rebuttal witnesses will be called. Counsel for State restates its objection to the admission of Defense Exhibits 1084, 1085 and 1086. Counsel are advised the Court will issue a ruling.

State raises the issue of use of transcripts. Argument ensues. **IT IS ORDERED** that transcripts can be used.

Counsel for Defendant moves the Court that in order to play excerpts during closing argument that were previously played, Defense would withdraw offered Exhibits 1084, 1085 and 1086. The Court requests to see the context in which the exhibits were played.

Counsel are provided draft final jury instructions.

~~~Noon Recess~~~

At 2:41 p.m. the hearing resumes.

The Court and Counsel discuss final jury instructions.

~~~Recess~~~

At 4:22 p.m. the hearing resumes.

Discussion ensues regarding creation of peril. **IT IS ORDERED denying** Defense motion for mistrial.

The Court directs the Clerk to provide the Court with Exhibits 1084, 1085 and 1086. Defense Counsel withdraws Exhibits 1084, 1085 and 1086 and advises his request is only to play the exhibits during closing argument. Discussion ensues.

The Court and Counsel discuss scheduling and length of closing arguments.

Counsel are advised this matter will resume next Tuesday at 1:30 p.m. with the Jury and Counsel shall appear Tuesday at 9:00 a.m.

The Court **grants** the media's request for a second camera in the courtroom.

**END TIME: 5:04 p.m.**

cc: Gallagher & Kennedy, P.C., Counsel for Shore Family (e)  
Murphy, Schmitt, Hathaway & Wilson, PLLC, Co-Counsel for Brown Family (e)  
Stone & Magnanini, Co-Counsel Brown Family (e)  
Aspey, Watkins & Diesel, PLLC, Counsel for Neuman Family (e)  
Steptoe & Johnson, Counsel for KPNX Broadcasting Company, TruTV and In Session (e)  
Perkins, Coie, Brown & Bain, Counsel KTVK-TV (e)  
Division PTB (e)  
Victim Services (e)  
Court Administration  
Customer Service Supervisor, Camp Verde Superior Court Building